



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/577,659

05/01/2006

Emmanouil Domazakis

CFAV-7

8474

52450

7590

04/10/2009

KRIEG DEVAULT LLP
ONE INDIANA SQUARE
SUITE 2800
INDIANAPOLIS, IN 46204-2079

EXAMINER

CALDWELL, SUSAN K

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

04/10/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/577,659	Applicant(s) DOMAZAKIS, EMMANOUIL	
	Examiner SUSAN CALDWELL	Art Unit 4111	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/01/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☒ Claim(s) 1-4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/01/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc. Appropriate correction is required.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.

- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A “Sequence Listing” is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required “Sequence Listing” is not submitted as an electronic document on compact disc).

Content of Specification

- (a) Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.
- (b) Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.
- (c) Statement Regarding Federally Sponsored Research and Development: See MPEP § 310.
- (d) The Names Of The Parties To A Joint Research Agreement: See 37 CFR 1.71(g).

- (e) Incorporation-By-Reference Of Material Submitted On a Compact Disc: The specification is required to include an incorporation-by-reference of electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application. See 37 CFR 1.52(e) and MPEP § 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text were permitted as electronic documents on compact discs beginning on September 8, 2000.
- (f) Background of the Invention: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:
 - (1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."
 - (2) Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."
- (g) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly

and only to the extent that they contribute to an understanding of the invention.

- (h) Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.
- (i) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.
- (j) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet or electronic page (37 CFR 1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).
- (k) Abstract of the Disclosure: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit an abstract commencing on a separate sheet if an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB)

of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(e).

- (l) Sequence Listing. See 37 CFR 1.821-1.825 and MPEP §§ 2421-2431. The requirement for a sequence listing applies to all sequences disclosed in a given application, whether the sequences are claimed or not. See MPEP § 2421.02.

The disclosure is objected to because of the following informalities: The specification contains several grammatical and idiomatic errors. Appropriate revision and correction are required.

Claim Objections

Claims 1-4 are objected to because of the following informalities: “the fate” on line 6 of claim 1 should read “the fat”. Line 3 of claim 1 should read “the following”, instead of “to following”. “95-80%” and “25-20°C” on line 11 of claim 1 to read “80-95%” and “20-25°C”. “(1)” on line 2 of claim 2 should read “1” without parenthesis. “80-75%” on line 16 of claim 1 should read “75-80%”. “80-75%” on line 9-10 of claim 3 should read “75-80%”. “0.5-0.1” on line 10 of claim 3 should read “0.1-0.5”. “(3)” on line 2 of claim 4 should read “3” without parenthesis. Appropriate correction is required.

Claims 1 and 3 are objected to because of the following informalities:

Claims must be one sentence. Claims 1 and 3 have two sentences within the claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-4 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. There are two sets of claims filed on May 1, 2006. First set of claims have two claims which are filed in the international application (PCT) as part of the original disclosure. Second set of claims have four claims, particularly claim 1 steps (d) through (f), and claim 3 steps (e') through (f') that were not described in the original disclosure of claims and specification, such as humidity, air velocity, specific temperature, filed in the

international application (PCT/GR2005/000009), therefore the possession of the claimed invention at the time of filing are considered new matter.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte*

Steigewald, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949).

In the present instance, claim 1 recites the broad recitation “incorporated”, “vacuum conditions” and the claim also recites “(mixed)”, “(1000 mbar)” which is the narrower statement of the range/limitation. It is unclear as to whether the phrase within the parenthesis is actually a limitation or simply some unspecified preferred embodiment, which is indefinite. For example, it is unclear as to whether any vacuum conditions may be used, or if they must be 1000 mbar.

In addition, the phrase in claim 1(e): "The time of stay in the maturation chamber depends on the size of the product" is indefinite and does not limit the claim and unclear as to how this further limits or describes the actual method.

Claims 3 and 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3 and 4 recites the limitation "partial fermenting process products" which is unclear due to lack of clear description in the specification of what is defined by "partial", for example, “partial” could mean any number of factors involving time, temperature, mixture, humidity, and without defining the limitation of "partial", the term is indefinite.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2 and 4 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Domazakis (U.S. Pub. No. 2003/0049364) (“Domazakis”).

Regarding claim 2, Domazakis teaches fermented processed meat products such as cooked pork meats, sausages, salamis with incorporated olive oil (paragraph [0032]). Claim 2 is product by process of claim 1.

Regarding claim 4, Domazakis teaches fermenting process products with incorporated olive oil (paragraph [0032]). Claim 4 is product by process of claim 3.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Domazakis in view of Bloukas et al.

Regarding claim 1, Domazakis teaches a method of producing a meat products such as pork meats, sausages, salamis, by incorporating olive oil as a substitution for animal fat to increase stabilization of the meat emulsion (Abstract; paragraph [0019], [0027], [0032]); meat at -4°C(paragraph [0026]) mixing with salts, preservatives and spices (paragraphs [0036],[0038]); stuffing mixture in casings under vacuum conditions and pasteurizing the meat mixture in chambers (paragraph [0038]) in freezing temperatures to produce a stable meat product

(paragraph [0039]); however, Domazakis does not teach adjustable humidity, temperature, and air velocity in maturation and dehydration chamber in the process of producing fermented meat product.

Bloukas teaches the effect of replacing pork backfat with olive oil to lower saturated animal fat, to determine color, texture, and appearance of meat emulsions in the process of making fermented sausages, by experimenting with adjustable processing conditions such as humidity (80-95%), temperature (15-20.5°C), and air velocity(0.5-0.7m/sec.) in fermenting room(maturation and dehydration rooms) for a period of 0, 1, 3, 5, 12, 19, 26 days (see pg 135, 2nd paragraph; pg 136, Table 2). Bloukas teaches the texture of fermented sausages was significantly affected by the method of incorporation of the olive oil into the meat mixture (pg 140, last sentence); the weight losses of sausages depend on the temperature, relative humidity, and air movement in the maturation and dehydration rooms (pg. 137, Results and Discussion, second paragraph), and the processing time had a significant effect on lightness, redness and yellowness of the fermented sausages (pg 140, first full paragraph; see Fig. 3). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use olive oil to beneficially effect stabilization, texture, color, density of meat emulsions such as salami, sausages, ham, and lowering saturated animal fats for better dietary

health to consumers, by lowering cholesterol as a means of preventing cardiovascular heart disease as taught by Bloukas (pg 133-134, see Introduction).

Regarding claim 2, Domazakis teaches fermented processed meat products such as cooked pork meats, sausages, salamis with incorporated olive oil (paragraph [0032]). Claim 2 is product by process of claim 1. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made that sausages and salamis are fermented meat products produced by the process above.

Regarding claim 3, Domazakis in view of Bloukas teaches the method as cited above in claim 1; in addition, Domazakis teaches heating the meat mixture up to 71°C after pasteurizing step for creating a stable emulsion (paragraph [0026], [0038]) . Bloukas teaches fermenting periods from 0 to 30 days, in which fermented sausages were observed and assessed for weight loss, color, firmness(soft or firm), sensory evaluation (pages 136-137 in Materials and Methods). Therefore, partial fermenting process is defined according to one of ordinary skill in the art, and what desirable meat product is to be produced, for example, firm or soft sausage, moist or dry, and light or dark salami. Furthermore,

the variables in the fermenting process, i.e. relative humidity, temperature, air velocity are result effective variables that are within the ambit of a person of ordinary skill in the art, without producing any new or unexpected results. See *In re Boesch*, 205 USPQ 215 (CCPA 1980) (see MPEP § 2144.05, II.).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate olive oil in meat mixture to beneficially effect stabilization, texture, color, density of meat emulsions, and to lower saturated animal fats for increased dietary health benefit to consumers by lowering cholesterol in meat products as a means of preventing cardiovascular heart disease as taught by Bloukas (pg 133-134, see Introduction).

Regarding claim 4, Domazakis teaches fermenting process products with incorporated olive oil (paragraph [0032]). Claim 4 is product by process of claim 3. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made that sausage is a fermented meat product that is produced by the process above in claim 3.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SUSAN CALDWELL whose telephone number is (571)270-7870. The examiner can normally be reached on Monday - Friday EST, 7:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571)272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SC

/KEITH D. HENDRICKS/
Supervisory Patent Examiner, Art Unit 1794